

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Thompson Analyst: Jeani Brent Bill Number: AB 2435
Related Bills: See Legislative History Telephone: 845-3410 Introduced Date: 02/24/2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Grape Crop Losses Credit/Losses from Glassy-Winged Sharpshooter Pest or Pierce's Disease

SUMMARY

Under the Personal Income Tax Law (PITL) and Bank and Corporation Tax Law (B&CTL), this bill would allow taxpayers a 100% credit equal to the grape crop losses sustained by a grapevine grower because of the Glassy-Winged Sharpshooter pest or Pierce's Disease.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to taxable and income years beginning on or after January 1, 2000.

LEGISLATIVE HISTORY

AB 2455 (2000) would allow a credit equal to the market price, as defined, of any unharvested fruit grown by a commercial grower that was lost as a direct result of the Fallbrook Mexican Fruit Fly Quarantine.

AB 2170 (2000) would allow a credit equal to an unspecified amount of farm losses suffered by farmers in this state as a result of any natural disaster, including pest infestations.

SB 2104 (2000) would provide an election to expense the cost of certain qualified property and a 100% net operating loss carryover for farmers that experience a "natural or quarantine event."

AB 122 (Stats. 1997, Ch. 607) allows accelerated depreciation for grapevines that were replaced as a result of Pierce's Disease.

SB 1778 (Stats. 1992, Ch. 960) allows accelerated depreciation for grapevines that were replaced as a result of phylloxera infestation.

PROGRAM HISTORY/BACKGROUND

Pierce's disease is a virulent disease of grapevines that is caused by the bacterium *Xylella fastidiosa* and is spread by a variety of insects known as sharpshooters. The insects breed principally in riparian habitat and move to vineyards during the summer months when the plants are succulent. The Blue-Green Sharpshooter is the main carrier in California's North Coast area and the Glassy-Winged Sharpshooter is scattered throughout Southern California's Temecula Valley. Reports indicate that 8,000 of the total 78,000 acres in the North Coast area are infected with Pierce's Disease and half of the 3,000 acres in Temecula Valley are infected.

Board Position:

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Department Director

Date

Gerald H. Goldberg

4/25/00

Although table grapes are susceptible, wine grapes suffer the greatest damage from Pierce's disease because they are more likely to be located near riparian habitat where the sharpshooters breed. The disease kills grapevines by blocking their water-carrying tissue. Unlike phylloxera infestation, which causes a long, slow vine decline, Pierce's disease may kill an infected vine within two years. Presently, the only known response is to replace infected vines, although monitoring, traps, and periodic spraying may mitigate the spread of the disease.

SPECIFIC FINDINGS

Current state and federal law, among other deductions, generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Under existing state and federal law, any loss sustained during the year that is not compensated for by insurance or otherwise is allowed as a deduction. The amount of loss deduction is limited to the taxpayer's basis in the property that was lost.

Existing state and federal law allows taxpayers to carry forward a net operating loss (NOL). An NOL is defined as the excess of allowable deductions over gross income computed under the law in effect for the loss year. Taxpayers may deduct the carryover amount in subsequent years.

Depending on the type of taxpayer or amount of a taxpayer's income, the amount of the NOL that is eligible to be carried forward and the number of years it can be carried forward will vary. For most taxpayers, 50% of the computed NOL may be carried forward for a maximum of five years. Special NOL treatment, as stated in the chart below, is provided for the specified taxpayers.

Type of NOL	Carryover %	Carryover Period
General NOL	50%	5 Years
New Business Year 1	100%	8 Years
Year 2	100%	7 Years
Year 3	100%	6 Years
Eligible Small Business	100%	5 Years
Economic Development Areas	100%	15 Years

Existing state and federal laws provide various tax credits that are designed to provide tax relief for taxpayers who must incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research credits or the federal reforestation credit).

Neither state nor federal laws currently allow a credit for lost crops.

This bill would allow taxpayers a 100% credit equal to the grape crop losses sustained by a grapevine grower because of the Glassy-Winged Sharpshooter pest or Pierce's Disease.

This bill would create a permanent credit and does not specify a limit on the number of years for carryover of unused credit.

Policy Considerations

This bill provides taxpayers a 100% credit, which is unprecedented as a matter of state tax policy. Moreover, the taxpayer would be allowed to deduct the expenses related to planting and growing the unharvested fruit. If the taxpayer does not have sufficient income to cover the expense deductions, the taxpayer would realize a net operating loss and be allowed to carry over 50% of the NOL to reduce income in future years.

This bill would allow taxpayers to claim the credit even if the taxpayer received insurance compensation for the losses. The department understands from the author's staff that this result is unintended. The attached amendments would ensure that taxpayers could receive the credit only for amounts not compensated for by insurance or otherwise.

Implementation Considerations

This bill does not require the taxpayer to verify the amount of loss or verify that the loss was sustained during the taxpayer's taxable or income year. The attached amendments are provided pursuant to discussions with the author's staff. The amendments would provide rules requiring taxpayers claiming the credit to obtain a written certification from an agricultural commissioner that the grape crop was lost, that the market price of the losses sustained by the taxpayer is as claimed, and that the loss occurred during the taxable or income year. These amendments would resolve the department's implementation concern that it might be unable to verify either the amount of the loss or that the loss was actually sustained. A taxpayer would still be permitted to substantiate these facts independently.

This bill would provide an unlimited carryover of excess credit amounts. Credits with unlimited carryovers must be maintained on tax forms and systems even when the credit has expired. Since tax credits usually are used within eight years, most recently enacted credits contain limited carryover provisions, generally eight or ten years.

FISCAL IMPACT

Departmental Costs

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

Tax Revenue Estimate

The revenue impact of this bill, under the assumptions discussed below, is estimated to be as follows:

Revenue Impact of AB 2435 Enactment Assumed After June 30, 2000 (In Millions)			
	2000-1	2001-2	2002-3
Revenue Impact	(\$10)	(\$15)	(\$17)

This analysis assumes only losses incurred in California would qualify and does not account for changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

Based on information received from the State Department of Food and Agriculture and other sources, the amount of losses in California as a result of Pierce's disease in 2000 is projected to be \$20 million. It was assumed that this total would qualify for the credit and that 50% of this total loss could be applied against available tax liabilities. Unused credits would be carried forward and applied until exhausted.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2435
As Introduced February 24, 2000

AMENDMENT 1

@@@@ Leg. Counsel: Please modify Sections 1 and 2 of AB 2435 as follows:

SECTION 1. Section 17053.44 is added to the Revenue and Taxation Code, to read:

17053.44. (a) There shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to the market price of any grape crop losses sustained by the taxpayer during the taxable year ~~sustained by a grapevine grower~~ and not compensated for by insurance or otherwise due to the Glassy-Winged Sharpshooter pest or Pierce's disease.

(b) For purposes of this section, "market price" means the market price that would have been paid for the unharvested fruit at the estimated harvest time for that fruit.

(c) A county agricultural commissioner shall do all of the following:

(1) Certify the market price of the grape crop losses for which the taxpayer claims the credit pursuant to this section.

(2) Certify that the grape crop losses for which the taxpayer claims a credit under this section were sustained as a direct result of the Glassy-Winged Sharpshooter pest or Pierce's disease.

(3) Certify when the grape crop losses were sustained.

(4) Provide the taxpayer a written certification showing each of the items certified in paragraphs (1) through (3), inclusive.

(d) The taxpayer shall do both of the following:

(1) Obtain from an agricultural commissioner the written certification provided in subdivision (c).

(2) Retain a copy of the certification and make it available to the Franchise Tax Board upon request.

(e) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 2. Section 23644 is added to the Revenue and Taxation Code, to read:

23644. (a) There shall be allowed as a credit against the "tax," as defined in Section 23036, an amount equal to the market price of any grape crop losses sustained by the taxpayer during the income year ~~sustained by a grapevine grower~~ and not compensated for by insurance or otherwise due to the Glassy-Winged Sharpshooter pest or Pierce's disease.

(b) For purposes of this section, "market price" means the market price that would have been paid for the unharvested fruit at the estimated harvest time for that fruit.

(c) A county agricultural commissioner shall do all of the following:

(1) Certify the market price of the grape crop losses for which the taxpayer claims the credit pursuant to this section.

(2) Certify that the grape crop losses for which the taxpayer claims a credit under this section were sustained as a direct result of the Glassy-Winged Sharpshooter pest or Pierce's disease.

(3) Certify when the grape crop losses were sustained.

(4) Provide the taxpayer a written certification showing each of the items certified in paragraphs (1) through (3), inclusive.

(d) The taxpayer shall do both of the following:

(1) Obtain from an agricultural commissioner the written certification provided in subdivision (c).

(2) Retain a copy of the certification and make it available to the Franchise Tax Board upon request.

(e) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.